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(1)

NO. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 2008

WILLIE J. HORTON, JR.

Petitioner,

v.

COMMISSION ON PROFESSIONAL COMPETENCE, et. al.,

Defendant and Respondent.

On Petition for Writ of Certiorari
To the
Supreme Court of California
Of the United States
28 U.S.C. §1257(c)

PETITION FOR WRIT OF CERTIORARI

WILLIE J. HORTON, JR.
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Pro Se

QUESTIONS PRESENTED

1. Whether the Federal District Court violated Petitioner's due process and equal protection clause under the fourteenth amendment to the United States Constitution by breaking their agreement to retain jurisdiction over the settlement agreement just to resolve any disputes that might arise out of the interpretation of the agreement?

a) Where the Court of Appeal, Fourth Appellate District, Division One reversed their decision not to strike Petitioner's 2000 administrative proceeding exhibits after Petitioner signed the Federal District Court Settlement Agreement.

2. Whether Petitioner can invoke his federal constitutional claims, including Title VII claims as a result of the Federal District Court not retaining

jurisdiction as promised until the settlement became final?

3. Whether Petitioner received a fair hearing when the California State Appellate Court returned the 2000 administrative proceeding exhibits to Petitioner directing Petitioner to lodge only those exhibits that were part of the Superior Court record and to provide some form of supporting documentation of this fact;

a) Where Petitioner provided the Appellant court with a CERTIFIED copy of the original documents pertaining to the suppression of the Superior Court record in case number GIC 768883 on January 27, 2003 just three days after the Appellate Court requested proof of the exhibits;

b) Where the certified documents was witnessed by Stephen V. Love, Clerk of the

Superior Court of the State of California for the County of San Diego.

c) Where the certified documents was witnessed by Richard E.L. Strauss, Judge of the Superior Court of the State of California for the County of San Diego on January 27, 2003.

d) Where the Appellate Court disregarded the certified documents that they requested and suppressed all the 2000 administrative proceedings before making their adverse decision against Petitioner in his writ of mandate petition in Superior Court case number GIC 768883.

e) Whether Petitioner was discriminated against by the California Appellate Court after he supplied the court with the

requested proof of the 2000 administrative proceedings including an order in his favor?

4. Whether the Federal District Court Settlement Agreement was done in good faith since Petitioner was allowed to pursue his state claims in the state court of appeals, and both courts rendered Petitioner a major setback by first striking all of the 2000 administrative proceeding exhibits and the Federal District Court not retaining jurisdiction as promised?

5. Whether Petitioner received a fair hearing and ruling from the Court of Appeal Fourth Appellate District, Division One, since the majority of exhibits were confirmed copies filed stamped by the lower courts?

6. Whether it is a violation of a California tenure teacher to be deprived of liberty under due

process clause of the Fifth Amendment and the due process and equal protection clause of the Fourth Amendment to the Constitution of the United States:

a) Where a school district refused to grant a speedy administrative hearing as mandated by California Education Code § 44944 within 60 days of requesting a hearing?

b) Where the school district fraudulently concealed the first administrative order and waited 345 days to hold a second hearing on the same dismissal charges.

7. Whether the 2000 administrative ruling is a final order as it relates to the Rooker-Feldman Doctrine in light of § 1257(a) and the 1789 Federal Act?

a) Where the 2000 administrative order was adjudicated seven months before Petitioner filed his first federal action?

b) Where the 2000 administrative order was finalized nine months before the 2001 administrative order, was it a violation of Petitioner's due process clause of the Fifth Amendment, due process and equal protection clause of the Fourteenth Amendment, where Defendants and state courts have refused to recognize the 2000 administrative proceedings. The lower court's error failed to heed a binding Supreme Court precedent.

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PETITION FOR WRIT OF CERTIORARI

Willie J. Horton, Jr. respectfully petitions for a Writ of Certiorari to review the judgment of the California Supreme Court and the Fourth District Court of Appeal Division One in this case.

OPINIONS BELOW

The decision of the California Supreme Court denying review (Appendix A).

JURISDICTION ON CERTIORARI

On October 22, 2008, the California Supreme Court denied review en banc petition for review of the Fourth District Court of Appeal, Division One. The jurisdiction of this court is invoked under 28 U.S.C. §1257(a) (Appendix A).

The Fifth Amendment due process clause, to life, liberty and the pursuit of happiness and the

equal protection clause under the Fourteenth Amendment protects property rights.

LEGISLATIVE MATERIAL

(APA) California Govt. Code Section 11524 was revised in 1997 to incorporate the statutory judicial review decided by Darby v. Cisneros (1993) 509 U.S. 137p 113 S.Ct. 2539; 125 L. Ed.2d. 113.

STATEMENT OF THE CASE

Plaintiff and Appellant, Willie J. Horton, Jr. (hereinafter "HORTON") became principal in 1995 of Youth Opportunities High School (YOU), an alternative high school, focusing on literacy skills and school to work transitions. He is requesting a review of the Supreme Court of California decision not to review the Court of Appeal, Fourth Appellate District, Div. 1 – No. D051155 upholding the 2001 administrative decision of March 15, 2001, after a

long delay of the administrative proceedings and total suppression of the 2000 administrative proceedings including the adverse decision against the San Diego Unified School District (hereinafter "DISTRICT").

1. HORTON filed a formal complaint with the Superintendent of Schools, alleging conspiracy and retaliation against principal Willie J. Horton, Jr. on September 24, 1999. (Clerk's transcript hereinafter "CT" pages 744-745, App. E).

2. Three weeks later HORTON was forced to take personal leave just three weeks after filing his retaliation complaint (CT pages 768-769).

3. On February 1, 2000 the DISTRICT served HORTON with dismissal charges alleging that cause existed to dismiss HORTON from his employment as a principal.

4. HORTON requested a hearing on February 28, 2000. (CT p. 776).

5. On March 21, 2000, HORTON was mailed a notice of case setting from the office of administrative hearings setting the case for hearing on June 1 and 2nd, 2000.

6. On March 29, 2000, HORTON'S attorney received an accusation from the DISTRICT and on April 3, 2000 HORTON'S attorney filed a notice of defense (CT pp. 705-707).

7. On May 1, 2000 HORTON filed a motion to dismiss the accusation for failure to commence hearing within 60 days of employee's request for a hearing as mandated by Education Code Section 44944. (CT p. 776 – App. F.

8. On May 15, 2000, the DISTRICT filed San Diego Unified School District's opposition to

the motion to dismiss and motion and memorandum of points and authorities in support of a continuance of proceedings.

9. On May 19, 2000, HORTON filed HORTON'S reply memorandum to DISTRICT opposition to the motion to dismiss and opposition to DISTRICT'S motion for continuance of the proceedings.

10. Oral argument was held on May 22, 2000, both parties were given the opportunity to file further argument on the motion until the close of business on May 23, 2000.

11. On May 23, 2000, HORTON filed by fax transmission HORTON'S SUPPLEMENTAL AUTHORITIES REGARDING WHETHER THE ADMINSTRATIVE TRIBUNAL MAY ISSUE AN ORDER NUNC PRO TUNC.

12. The motion to dismiss filed by Respondent HORTON is GRANTED. The DISTRICT'S motion for continuance is DENIED on May 25, 2000 (CT 279-283).

13. On May 31, 2000 HORTON received a letter from the Human Resource Services Division stating, "The purpose of this letter is to advise you that you will continue on administrative leave with pay irrespective of the May 25, 2000 ruling of Stephen E. Hjelt, Administrative Law Judge..." (CT p. 287 – App. G).

14. HORTON received another letter from Human Resource Services Division on May 31, 2000 stating, "that you shall be released from your position as principal at the end of the 1999-2000 school year. You will be reassigned to the classroom effective July 1, 2000 (CT p. 286).

15. HORTON received a third letter from Human Resource Services Division dated August 28, 2000. The purpose of the letter was to clarify HORTON'S status with San Diego City Schools (CT p. 288).

16. Offer to compromise was presented to DISTRICT on May 19, 2000 at the request of DISTRICT counsel (CT pp. 369-370).

17. HORTON received notice from the Court of Appeal Fourth Appellate District dated January 24, 2003 where the court sent the 2000 administrative proceeding exhibits back to HORTON (CT p. 332 – App. H).

18. After a 345 days delay in the administrative proceedings a second hearing was commenced on the same dismissal charges.

19. On March 15, 2001, the administrative tribunal ruled in favor of the DISTRICT superseding the first ruling on the same dismissal charges of May 25, 2000. THE DISTRICT never challenged the May 25, 2000 ruling for a petition for writ of mandate in superior court as required by law. The administrative tribunal has told HORTON that they have no way of knowing if the DISTRICT appealed the adverse ruling.

20. HORTON filed a petition for reconsideration. His petition was denied on April 24, 2001 (CT pp. 728-736).

21. In case number GIC: 768883 HORTON certified that he presented the above 2000 administrative proceedings in superior court and the trial court suppressed the evidence (CT pp. 778-779) for his motion for writ of mandate.

22. HORTON'S petition for writ of mandate was filed July 17, 2001 (CT pp. 778-791). All the above exhibits were filed in the superior court in 2001 the first state action. The trial court affirmed the 2001 administrative hearing decision by telephonic ruling on January 1, 2002.

HORTON made a timely appeal on March 10, 2002, court of appeals ruled in favor of the DISTRICT and denied HORTON a rehearing.

23. HORTON activated his stayed state complaint second state action and the trial court sustained the demurrers without leave to amend, finding that the First State Action, and the First and Second Federal Actions asserted the same injury.

24. HORTON petitioned for a rehearing and the appellate court denied his rehearing petition on August 28, 2008.

1. Background

The first administrative order established legal rights to petitioner and defendants are liable for not recognizing the 2000 administrative proceedings, including the first administrative order. Legal obligations are attached to the first administrative order. The highest state court erred in not addressing the 2000 administrative proceedings in particular the first administrative order, and the Federal questions of law presented by petitioner. (See *Board of Education v. Superior Court*, 448 U.S. 1343, 1345-46. 1980).

Petitioner is claiming that Defendants Commission on Professional Competence

(hereinafter "COMMISSION") and DISTRICT were given a second opportunity to cure legal and factual deficiencies that led to the DISTRICT defeat in a prior suit. (*Ferraro v. Camarlinghi*, Supra, 161 Cal. App. 4th at page 531). This rule applies to give res judicata effect to federal court actions as well as to state court actions that include an administrative mandamus petition. The DISTRICT was the original plaintiff who received an adverse ruling on May 25, 2000 from the administrative tribunal. The DISTRICT lost their motion for a continuance and was required by the Administrative Procedure Act (APA) California Govt. Code Section 11524(c) to file for a writ of mandate in superior court within ten (10) working days. The DISTRICT is the only Plaintiff in the State of California who was allowed to have a

second chance or take a second bite of the apple by omitting all evidentiary information from February 28, 2000 when HORTON requested a hearing until November 20, 2000.

The administrative tribunal and DISTRICT MISCONDUCT was a violation of Plaintiff's due process of law and a violation of his constitutional rights to a fair hearing.

HORTON is not challenging the same termination, he is challenging the concealed court record from February 28, 2000 until November 20, 2000. The state appellate court refused to honor the certified certificate certifying the 2000 administrative proceeding documents.

HORTON is relying on a 1982 California Supreme Court case *People v. Sims* (1982) 32 Cal. 3d 468).

a) HORTON satisfies the Sims Test. The Sims court dispelled the "uncertainty and confusion existing in the case law as to whether the decision of an administrative agency may even collaterally estop a later action."

b) Sims court held administrative agency findings may be given collateral estoppels effect of the agency, acting in a judicial capacity, resolved disputed issues of fact properly before it, in a proceeding in which the parties had an adequate opportunity to litigate the factual issues. See also *United States v. Utah Constr., Co.* [1966] 384 U.S. 394 [87 S.Ct. 1545]. In the present case, Defendants' DISTRICT and HORTON had a hearing on May 22, 2000 to argue two different motions.

c) Plaintiff argued that the administrative tribunal had to dismiss the charges, because of Defendants' failure to supply him with a hearing within 60 days mandated by California Education Code §44944.

d) Defendants argued that they should be allowed to continue the case even though they committed the FATAL FLAW (ERROR).

3. The Sims court also held that the finality element was satisfied where the time for seeking judicial review of the administrative decision through a petition for a writ of mandate had expired without such review being sought. The DISTRICT had until June 8, 2000 to seek review. DISTRICT never did seek a review of the above adverse ruling. In the present case the May 22, 2000 hearing satisfies a proceeding in which the

parties had an adequate opportunity to litigate the factual issues.

Since Sims, the California Supreme Court and the court of appeals have frequently applied its principles to decide the collateral estoppels effect of administrative findings on subsequent civil litigation.

In another California Supreme Court case *Barry Johnson v. City of Loma Linda*, Cal. 4th 61, 99 Cal. Rptr. 2nd 316). In Johnson, the court ruled that plaintiff had failed to bring a timely judicial challenge to the administrative findings against him, the court concluded that plaintiff was bound by those findings. The Johnson case was founded on the rationale that a plaintiff is entitled to only one opportunity to try their claim. If they take that opportunity in the context of an administrative

process, they cannot merely ignore an adverse result and ask for a "do-over" in the same administrative tribunal. The DISTRICT'S actions are therefore buried in the doctrine of res judicata or that portion of it known as collateral estoppels and more recently as issue preclusion.

This rule of law has existed for a long time in California, not only that it has existed, for many years. A January 28, 2008 case shows the continuing vitality of the rule.

A recent case *Ahmadi Kashani, Plaintiff and Appellate v. The Reagents of the University of California*, citation 159 Cal. App. 4th 449, or 71 Cal. Rptr. 3rd 556.

The Kashani court held if a party either participated in a quasi-judicial hearing, or was afforded the opportunity to do so part of a

mandatory administrative process, that process is considered the first suit, and a party is bound by its result; and the exhaustion of judicial remedies rule provides the party cannot pursue another remedy until they overturn the adverse result of the first suit by mandate action in superior court. Defendants' COMMISSION has conceded that the decision becomes the decision of the DISTRICT governing board. The COMMISSION ceases to exist and serves no function in any further review process (Education Code 44944(c)). Defendants' DISTRICT did not satisfy this test. Defendants' COMMISSION never should have allowed Defendants' District to refile the same dismissed charges without an order from the superior court in a writ of mandate proceeding. COMMISSION violated its internal laws, rules and regulations and

its mission statement which states, "We provide a neutral forum for fair and independent resolution of matters in a professional, efficient and innovative way, ensuring due process and respecting the dignity of ALL." The COMMISSION did not protect HORTON'S due process of law.

The factual disputes resolved at the May 22, 2000 hearing were clearly relevant to the issue of property before the court and both parties had a full and fair opportunity to argue their version of the facts and AN OPPORTUNITY TO SEEK COURT REVIEW OF ANY ADVERSE FINDINGS. There is no need nor justification for a second evidentiary hearing without the DISTRICT first seeking a writ of mandate in superior court.

The federal courts have not hesitated to apply res judicata to enforce repose where the parties

have had an adequate opportunity to litigate. See the following federal court cases" *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381; *Hanover Bank v. United States*, 285 F.2d 455; *Fairmont Aluminum Co. v. Commissioner*, 222 F.2d 622; *Seatrain Lines, Inc. v. Pennsylvania R. Co.*, 207 F.2d 255. See also *Goldstein v. Daft*, 236 F. supp. 730, aff'd 353 F.2d 484, Cert. Denied, 383 U.S. 960, where collateral estoppels was applied to prevent relitigation of factual disputes resolved by an arbitrator.

It is important to review the appellate ruling for the following reasons:

a) Other appellate courts have ruled differently on the same issues; and

b) The ruling will adversely affect many school district employees. The State of California

School Districts employ thousands of credentialed tenured instructors and thousands of school administrators.

c) This is the only case in California where the courts ruled differently when a plaintiff received an adverse decision and did not seek review in the superior court for a writ of mandate. By the California supreme court refusing to review this instant case the court is mandated by STARE DECISIS to stand by that which has been decided. Our judicial system demands that it be overturned only on a showing of good cause. Where such a good cause is not shown, it will not be repudiated. The California Supreme Court should have reviewed the case to show good cause before denying review.

Even if the ruling is not published, it will affect how school districts' administrators and administrative tribunals discharge tenure teachers through the administrative tribunal.

The second administrative order was fraudulently obtained by the District.

A second administrative law judge was assigned to hear the case in September of 2000 approximately four months after the first administrative order was issued. HORTON filed a motion to have the same dismissed charges dismissed a second time. HORTON'S motion for failure to comply was denied without prejudice to him but allowing him to renew the motion at the time of the hearing (App. I).

The District was represented by a new law firm Burke, Williams & Sorensen, LLP. The term

of agreement was from September 1, 2000, through the end of litigation unless sooner terminated. The law firm was retained just three and a half months after the DISTRICT received the adverse decision. The San Diego Office of Administrative Hearings set a hearing date for November 20, 2000. The ALJ held a hearing for November 20, 2000 to allow parties to argue if the DISTRICT should be given a continuance until February 2001. The DISTRICT'S legal counsel tried everything to get HORTON to stipulate to a hearing for February. HORTON refused to stipulate to a second hearing and offer his motion to have the administrative proceeding dismissed.

A question of fact exists as to whether the first administrative order of May 25, 2000 is a final order as it relates to the Rooker-Feldman Doctrine

in light of §1257(a) and the 1789 Federal Act. The Rooker-Feldman Doctrine precluded the lower Federal District Court review of state court decisions, precluded assertion of subject matter jurisdiction over claims of the administrative proceedings (CT p. 841 lines 7-18).

The appellate court and trial courts were misled to believe that the federal action barred the state claims because of Res Judicata Doctrine. HORTON'S positive administrative ruling as Respondent barred Res Judicata for the federal court, because the first federal action was filed seven months after the adverse May 25, 2000 administrative ruling.

2. Settlement Agreement

The transcript of settlement conference before the Honorable James F. Stiven, United

States Magistrate Judge was held at 10:00 a.m., July 22, 2002. The case number was 00CV2450, *Horton v. Lopez.*

HORTON had a lot at stake entering into the settlement agreement such as:

1. Four hard earned life teaching credentials and administrative credential.

a) The federal district court agreed to retain jurisdiction over the case just to resolve any disputes that might arise out of the interpretation of the settlement agreement. HORTON relied on this representation by the court. In fact HORTON was not going to sign the settlement agreement until the court agreed to retain jurisdiction.

b) Shortly after the federal district court gave up jurisdiction the court of appeal acted

adversely to HORTON by sending all of the 2000 administrative proceeding exhibits back to him before making their adverse decision without giving notice or affording the parties an opportunity to have either orally or written argument. The 2000 administrative proceeding exhibits is the crux of this action. The court action was a violation of HORTON'S constitutional rights guaranteed by the due process clause of the Fifth Amendment and the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States (App. H).

c) The appellate court in their July 29, 2008 decision states, HORTON is asserting the same injury and hence the same cause of action. The DISTRICT court reached the same conclusion based on the first federal action; stating that the

voluntary dismissal with prejudice in that action operated as an adjudication on the merits which had the same res judicata effect as a judgment after trial. HORTON challenges this assertion since the federal court did not retain jurisdiction of the settlement agreement. Therefore, the settlement never did become final.

HORTON entered into the settlement agreement only because the Federal District Court assured him that they would retain jurisdiction of the case. This agreement amounted to a contract between the adverse parties and the Federal District Court.

The Federal District Court has a legal obligation to HORTON resulting from the parties' agreement for the court to retain jurisdiction of the case JUST TO RESOLVE ANY

DISPUTES that might arise out of the interpretation of the settlement agreement. The appellant state court reversed a previous order to accept HORTON'S 2000 administrative proceeding exhibits only after he had signed the agreement. The Federal District Court refused to allow HORTON to return to the Federal Court to work through the adverse action of the Appellant State Court as promised by the Federal District Court, before the signing of the settlement agreement (App. K – page 9, lines 11-23).

The state appellate court had a certified copy of all the 2000 administrative proceeding exhibits lodged with the Superior Court case number: GIC 768883. The court erred in ruling that it was unable to determine if the exhibits were part of the court record. This error

on the part of the state appellate court has caused great injury to HORTON and it is prejudicial to HORTON (CT p. 778 – App. L).

3. DEFENDANTS' COMMISSION AND DISTRICT COMMITTED FRAUD IN OBTAINING THE JUDGMENT AGAINST HORTON.

a) The Sacramento office of Administrative Hearings has all of the 2000 administrative proceeding exhibits on file. When HORTON had the Director and Chief Administrative Law Judge to investigate the proceedings, the investigator left out most of the 2000 administrative proceedings with the following exceptions.

> On January 26, 2000, a written statement of dismissal charges was filed against you by the Board of

Education, San Diego Unified School District;

- You filed an Answer and Request for hearing on the charges on Feburary 28, 2000;
- An accusation was filed on March 22, 2000;
- Your Notice of Defense to the Accusation was filed on April 3, 2000.

The third paragraph fast forwards the proceedings to February 8, 9, 13, 14 and 16, 2001. WHAT ADMINISTRATIVE PROCEEDINGS TOOK PLACE BETWEEN April 3, 2000 until February 8, 2001? (See CT page 265, the 2nd and 3rd paragraphs).

The Office of Administrative Hearings indicated that they had no way of knowing if the

DISTRICT appealed the May 25, 2000 adverse order (see CT page 712, last paragraph).

No state court ever required Defendant DISTRICT to show proof that they indeed had the adverse ruling set aside.

After Defendant COMMISSION committed fraud in leaving out most of the 2000 administrative proceeding documents in their investigation report, HORTON then filed a complaint with the State of California, Office of the Attorney General Department of Justice on September 3, 2002 (CT pages 701-704).

HORTON received a letter from Andrea Lynn Hoch, Senior Assistant Attorney General, dated September 16, 2002. She concluded and stated in her letter, "Your case has been heard in an administrative forum, the Superior Court

level of the judicial system and may potentially be addressed at an appellate level. The office of the Attorney General will not become involved in this proceeding and will leave this matter within the confines of the judicial system, deferring to the decision of an appellate court." The California Attorney General office covered up the fraud committed by the Office of Administrative Hearings in Sacramento, California.

There is a major conflict of interest in this case, because the attorney general has represented the Commission on Professional Competence throughout the state legal proceedings.

b) Defendants' DISTRICT continued covering up the fraud in this case by denying HORTON'S notice of motion for petition for reconsideration after the second administrative

hearing held February 8, 9, 13, 14 and 16, 2001. The DISTRICT violated California Govt. Code §11517 section "b", which states, "The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself (CT 728-734). HORTON'S motion for reconsideration was denied on April 27, 2001 (CT 735-736).

REASONS FOR GRANTING WRIT

1. The question presented by Petitioner is "an important one of first impression". Since the Federal District Court reneged on its promise to retain jurisdiction if HORTON signed the settlement agreement.

2. The issue is important because the appellate state court had a certified certificate in

its possession certifying all of the 2000 administrative proceeding exhibits when it decided to strike the exhibits from the court records.

3. An issue may assume importance between the lower court decision is at war with a well-established constructor given the statute by the administrative agency charged with its enforcement (*Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 235 (2004), *Morton v. Ruiz*, 415 U.S. 199, 201-02 (1974) (decision below asserted to be "inconsistent with long-established policy of the Secretary [of the Interior] and of the Bureau). *Patterson v. Lamb*, 329 U.S. 539 (1947) (decision below upset 25 years of War Department rulings and practices).

4. An issue likewise may be important because it involves the validity of agency

regulations under the statutes pursuant to which they were promulgated (*Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 84 (2002)).

5. The DISTRICT attempted to hide the first adverse administrative ruling of May 25, 2000, and they failed to appeal the first ruling. The California Supreme Court decision not to review the case is a miscarriage of justice, and a violation of HORTON'S constitutional rights under the Fifth and Fourteenth Amendments.

6. If permitted to stand, the California Supreme Court's ruling not to review the case would provide wrongdoers with a blueprint for using discretion where Congress specified that the courts could not use discretion. The California Supreme Court's decision not to review the case

instructs wrongdoers that they need only to hide exhibits.

HORTON is relying on a case decided by the United States Supreme Court argued and submitted December 16, 1950. This case is *Dickinson v. Petroleum Conversion Corporation* US (1950). In the landmark case 58 years ago, Supreme Court Justice Jackson, reversed decision of the court of appeals and that motion to dismiss appeal of the Petroleum Conversion Corporation should have been granted on grounds that corporation's failure to appeal from a prior decree forfeited its right of review.

The Honorable Justice Jackson delivered the opinion of the court. The only issue presented by this case turns on the FINALITY of a judgment for

purpose of appeal. This was a bar to any effort to re-litigate the claims.

In the present case the DISTRICT was prevented from re-litigating the same dismissed charges by Res Judicata / Collateral Estoppel effect of administrative findings on subsequent civil litigation. The trial courts and the appellate court should have reversed the second administrative order. Did HORTON receive a fair hearing from the state appellant court since substantial, relevant portions of the case was not considered in the court ruling?

A proper civil rights complaint should be liberally construed, and should not be dismissed unless it appears certain the Plaintiff can prove no set of facts which would entitle him or her to relief

(*Haines v. Kerner*, 404, U.S. 519, 520-21, 92 S.Ct. 594, 595-96).

PETITIONER HAS STANDING TO RAISE CONSTITUTIONAL ISSUES IN THE SUPREME COURT

The Article III judicial power to decide only cases and controversies means, at a minimum, that the Supreme Court can exercise its jurisdiction to determine the constitutionality of federal or state legislative and executive acts in the context of adjudging "the legal rights of litigants in actual controversies.

Liverpool SS. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1995).

Petitioner fulfills the three requirements of Article III:

1. First and foremost HORTON has alleged and proven that all charges were dismissed against him and Defendants' DISTRICT delayed a second hearing for 345 days without ever challenging the first adverse hearing ruling. This is an "injury" that is "concrete" and "actual, not conjectural or hypothetical".

Whitmore v. Arkansas [495 U.S.] 149, 155 [(1990)]. *Angeles v. Lyons*, 461, U.S. 95, 101-02 (1983).

Second, there is causation – a traceable first administrative order in favor of HORTON and against the defendant DISTRICT (*Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976). Thirdly, HORTON is asking this court to reverse the judgment that was obtained through fraud and deceit. This case satisfies the triad of

injury, in fact, causation, and redressability constitutes the core of Article III's case – or – controversy requirements.

CONCLUSION

The decision collides so squarely with this court's decisions and threatens such mischief that review should be granted, with summary reversal an appropriate disposition. If on the other hand, there might be basis for such a differentiating certiorari should be granted for plenary review of these questions, which would surely be an important one. "Where an administrative forum has the essential procedural characteristics of a court, its determination should be accorded the same finality that is accorded the judgment of a court. The importance of bringing a legal controversy to conclusion is generally no less when

the tribunal is an administrative tribunal than when it is a court."

Taken together, these issues and exhibits are enough to preclude a judgment as a matter of law in favor of HORTON since the judgment was obtained through fraud and concealment of substantial evidence. The DISTRICT never appealed the administrative adverse ruling but was able to conceal this material fact for eight years through the court system. The DISTRICT misconduct requires reversal of appellate court's judgment.

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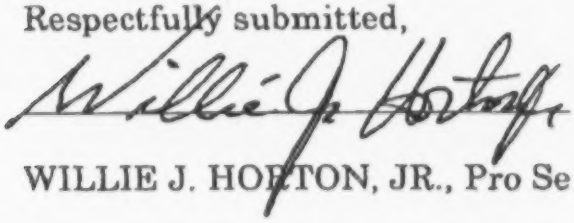
I, WILLIE J. HORTON, JR., respectfully request that this court issue a Writ of Certiorari.

Date: December 16, 2008

Respectfully submitted,



WILLIE J. HORTON, JR., Pro Se

Filed October 22, 2008

Court of Appeal, Fourth Appellate District,

Division One,

S166626

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Professional Competence, et al., -

Defendants and Respondents

The request for judicial notice is denied.

The petition for review is denied.

Werdegar, J., was absent and did not participate.

Frederick K. Ohlrich Clerk
Deputy

GEORGE
Chief Justice

Filed July 29, 2008

Court of Appeal, Fourth Appellate District,

Division One, State of California

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Professional Competence, et al., -

Defendants and Respondents

D051155

(Super. Ct. No. GIC821066)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Hayes, Judge. Affirmed.

In this appeal, Willie Horton challenges the trial court's dismissal of his action filed against the Commission on Professional Competence (Commission), the San Diego Unified School District (District), and various individuals. The

action challenged his termination from the District in 2001. Prior to filing the instant action, Horton had previously filed a state action and a federal action challenging the same termination at issue here. Both actions were resolved by a final judgment on the merits or its equivalent. Applying res judicata principles, the trial court sustained the defendants' demurrers without leave to amend and entered a judgment of dismissal in their favor. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal challenges the sustaining of a demurrer without leave to amend, our factual presentation is based on the allegations in the complaint and matters that may be judicially noticed. (Campbell v. Regents of University of California (2005) 35 Cal.4th 311, 320).

Horton was a principal at a District high school. In 2000, the District decided to terminate him. Horton exercised his right to request a hearing before the Commission to challenge the dismissal decision. In March 2001, the Commission upheld the District's decision to terminate him.

In response, Horton filed actions in both the federal and state courts challenging his termination. In December 2000, he filed an action in federal district court against the District and various individuals, alleging civil rights violations, discrimination, and tort causes of action (the First Federal Action). In June 2001, Horton filed a petition for writ of mandate in superior court challenging the Commission's ruling upholding the District's termination decision (the First State Action). In the First State Action, Horton named

the District as the respondent and the District's former superintendent Alan Bersin as the real party in interest. The First State Action challenged his termination on both procedural and substantive grounds, including allegations concerning the procedures by which the District voted to terminate him, evidentiary rulings during the Commission's hearing, disqualification of a proposed Commission panel member, alleged false testimony and improper ex parte communications, and the evidentiary support for the Commission's findings.

In May 2002, the superior court denied the mandamus position in the First State Action. In October 2002, the First Federal Action was settled and dismissed with prejudice. The settlement agreement included a provision stating the agreement was a "compromise of all disputed

federal and state claims between the parties," except that Horton could continue to prosecute the First State Action through the appellate process. Further, the settlement agreement contained a release clause providing that the agreement released all known and unknown claims arising out of, or relating to, the federal action.

In March 2003, we affirmed the superior court's denial of the writ petition in the First State Action. (*Horton v. San Diego Unified School Disrict* (March 10, 2003) D039749 [nonpub. Opn.].) In July 2003, the California Supreme Court denied Horton's petition for review in the First State Action.

In October 2003, Horton filed a second complaint in federal district court challenging his termination on procedural and substantive grounds

(the Second Federal Action). This pleading set forth a variety of theories, including a challenge to the Commission's jurisdiction based on a prior Commission ruling, and allegations of obstruction of justice, bias, due process violations, civil rights violations, fraud, discrimination, and conversion. The defendants in the Second Federal Action included the District and some of the individuals who had been named in the First Federal Action, as well as defendants named for the first time in any action (i.e., the Commission and several new individuals).

In November 2003, Horton, representing himself, filed a complaint in superior court, again challenging his termination on procedural and substantive grounds (the Second State Action). The complaint in this action set forth theories similar to

those in the Second Federal Action. Further, akin to the Second Federal Action, the complaint named as defendants the District and some of the individuals who had been named in the First Federal Action, and also added the Commission and several additional individuals. The complaint alleges that each defendant was "the agent, employee, representing partner, or joint venture of the remaining defendants and was acting within and without the course and scope of that relationship." In March 2004, the superior court stayed the Second State Action, pending resolution of the Second Federal Action. The Second State Action is currently before us for review.

In April 2004, the federal district court ruled that the Second Federal Action was barred under principles of res judicata based on the First State

Action and the First Federal Action. The district court found that in the Second Federal Action Horton was challenging the same termination that had been finally resolved in the both the First State Action and the First Federal Action. The district court noted that all the actions were based on the same allegations that Horton "was improperly terminated and was denied a fair and unbiased review process." (*Horton v. Ahler* (April 4, 2004) Case No. 03-CF-2007). The district court set forth the procedural history showing that the First State Action resulted in a final judgment on the merits, and concluded the res judicata bar operated because the action involved the same injury and hence the same cause of action. The district court reached the same conclusion based on the First Federal action, stating that the voluntary dismissal

with prejudice in that action operated as an adjudication on the merits which had the same res judicata effect as a judgment after trial. (*Ibid.*)

In April 2005, the Ninth Circuit Court of Appeals affirmed the res judicata ruling in the Second Federal Action. In May 2006, Horton's petition for writ of certiorari was denied by the United States Supreme Court.

After completion of the federal proceedings, the Commission and District filed demurrers to the complaint in the Second State Action. In February 2007, the trial court sustained the demurrers without leave to amend, finding that the First State Action, and the First and Second Federal Actions, asserted the same injury. The trial court entered a judgment of dismissal in favor of

defendants. Horton challenges this judgment in the appeal now before us.[1]

DISCUSSION

When reviewing the sustaining of a demurrer without leave to amend, we exercise our independent judgment to determine whether the complaint states a cause of action. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 986.) We assume the complaint's properly pleaded or implied

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[1] The Commission filed a motion to dismiss this appeal on the basis that Horton's notice of appeal states that it is from the trial court's denial of his motion to vacate the judgment, rather than from the judgment itself. We exercise our discretion to liberally construe the notice of appeal, and deem it to be an appeal from the judgment. (See *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 209-21). Accordingly, we deny the Commission's motion to dismiss the appeal.

factual allegations are true, and also consider judicially noticeable matters. (*Campbell v. Regents of University of California*, supra, 35 Cal.4th at p. 320.)

The doctrine of res judicata "is intended to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation." (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 829.) The doctrine precludes parties or their privies from relitigating the same cause of action finally resolved in a prior proceeding. (*Id.* At p. 828.) To apply res judicata, (1) the cause of action raised in the present proceeding must be the same as the cause of action in the prior proceeding; (2) the prior proceeding must have resulted in a final judgment on the merits; and (3) the party against

whom the doctrine is being asserted must have been a party or in privity with a party to the prior proceeding. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 531; *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556.)

The identity of the cause of action for res judicata is determined under the primary rights theory. The invasion of one primary right gives rise to a single cause of action. (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.) "[A] cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving upon the defendant, and 3) a delict or wrong done by the defendant which consists in a breach of such primary right and duty. [Citation.] Thus, two actions constitute a single cause of action if they both affect the same primary right."

(*Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.)

In determining whether there is a single cause of action, the significant factor is the harm suffered, as opposed to the particular theory asserted by the litigant. (*Slater v. Blackwood, supra,* 15 Cal.3d at p. 795.) "Even when there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. 'Hence a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different legal ground for relief.'" (*Ibid,* italics omitted.) Res judicata precludes a party from engaging in piecemeal litigation by splitting a single cause of action or relitigating the same cause of action on a

different theory or for different relief. (*Noble v. Draper* (2008) 160 Cal.App.4th 1, 11.) All claims based on the same cause of action that can be raised in a proceeding must be raised; if not brought initially they may not be brought at a later date. (*Id.* At pp. 11-12; see *Le Parc Community Assn. v. Workers' Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1170.) The doctrine "rests on the principle that a plaintiff is entitled to only one fair opportunity to litigate a given cause of action. He cannot 'split' it by reserving a portion for later adjudication; nor can he expect to be given a second opportunity to cure legal or factual deficiencies that led to his defeat in a prior suit." (*Ferraro v. Camarlinghi, supra*, 161 Cal.App.4th at p. 531.) This rule applies to give res judicata effect to federal court actions as well as to state court

actions that include an administrative mandamus petition. (*Gamble v. General Foods Corp., supra*, 229 Cal.App.3d at p. 899; *Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1470-1471, 1474; see *Mata v. City of Los Angeles* (1993) 20 Cal.App.4th 141, 147-148, 150-151.)

In 2000 and 2001, respectively, Horton filed the First Federal Action and the First State Action against the District and several individuals. These actions challenged the *same* termination under a variety of legal theories, and were *conclusively resolved* by a final judgment on the merits or its equivalent. The First Federal Action was dismissed with prejudice pursuant to a settlement agreement. A dismissal with prejudice arising from a settlement is deemed to be a judgment on the merits against the plaintiff, which bars a

subsequent action on the same cause of action. (*Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 67, 69; *Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1330-1331.) Similarly, the First State Action resulted in a final judgment on the merits after a proceeding before the superior court, an appellate challenge before this court, and a denial of review by the California Supreme Court. When presented with yet another action challenging the same termination, the federal district court reviewed these two prior proceedings and concluded the new action was barred under res judicata principles.

The Second State Action now before us once again challenges Horton's termination. The courts have repeatedly found that when an employee sues

because he or she has been terminated, there is a single cause of action based on the single primary right to continued *employment.* *(See, e.g., Swartzendruber v. City of San Diego* (1992) 3 Cal.App.4th 896, 908-909, overruled on other grounds in *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 72; *Takahashi v. Board of Education, supra,* 202 Cal.App.3d at p. 1476; *Gamble v. General Foods Corp., supra,* 229 Cal.App.3d at p. 901; see also *Acuna v. Regents of University of California* (1997) 56 Cal.App.4th 639, 648, 649.) If the claims are based on the termination and were, or could have been, presented in the prior judicial proceedings, res judicata will normally bar the claims, including claims sounding in tort, discrimination, or violation of due process. (*Takahashi, supra,* 202 Cal.App.3d at pp. 1476-

1485; *Gamble v. General Foods Corp., supra*, 229 Cal.App.3d at pp. 899-901; see *Johnson v. City of Loma Linda, supra*, 24 Cal.4th at pp. 69-78).

Because the claims in Horton's current and prior lawsuits are all based on his right to continued employment with the District, they all involve the same cause of action, regardless of the various legal theories asserted. Accordingly, the resolutions from the prior proceedings preclude Horton from again pursuing a lawsuit based on this same primary right.

Contrary to Horton's assertion, the fact that the instant lawsuit includes defendants that were not named in the First State Action and the First Federal Action (i.e., the Commission and several newly-named individuals) does not obviate the res judicata bar so as to permit this lawsuit to go

forward as to these new defendants. Res judicata applies to parties and their privies. In evaluating who is in privity to a party. "[t]he emphasis is not on a concept of identity of parties, but on the practical situation. The question is whether the non-party is sufficiently close to the original case to afford application of the principle of preclusion." (*People ex rel. State of Cal. V. Drinkhouse* (1970) 4 Cal.App.3d 931, 937.) "The question of who is in privity with a party to an action varies with the circumstances of each case. Generally speaking, it connotes a person who is so identified in interest with another that he represents the same legal right. The interests of the two must be harmonious and not in conflict." (*Carden v. Otto* (1974) 37 Cal.App.3d 887, 892; *Burdette v. Carrier Corp.*

(2008) 158 Cal.App.4th 1668, 1682-1684; see *Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 718).

The District, the Commission, and the individual defendants were involved in the termination process.[2] Their potential liability turned on the common issue of whether Horton's termination was procedurally and substantively proper. Various procedural challenges to the Commission's actions were litigated in the First

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[2] The complaint in the Second State Action before us does not specify the precise roles of all the individual defendants. However, because the complaint generally alleges that all defendants were agents or employees of each other, and because there are no allegations of injury distinct from the termination, we assume the individual defendants are included in the complaint because they played a role in the termination process.

State Action even though the Commission was not a party to that action. (See Horton v. San Diego Unified School District, supra, D039749.) The individuals involved in the termination process were part and parcel of the termination. In the case now before us, there are no allegations of injury distinct from the conduct associated with the District's termination decision and the Commission's review thereof.

Further, this Second State Action does not involve allegations indicating that the potential liability of any newly-named defendant for this injury is distinct from the liability asserted against the defendants in the First Federal and State Actions. Under these circumstances, the concept of a privity relationship between the District, the Commission, and the individual defendants

properly applies so as to make the res judicata bar available to the newly named defendants.

Moreover, even assuming arguendo that the Commission and the newly named individual defendants were not in privity with the defendants in the First State Action and the First Federal Action, they may properly assert res judicata as nonparties. Although as a matter of due process the party *against whom* the res judicata doctrine is asserted must always be a party or in privity with a party to the previous proceeding, the party *who is raising* the doctrine to preclude relitigation of a previously litigated matter need not always be a party or in privity to a party. (See *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 812; *Takahashi v. Board of Education, supra,* 202 Cal.App.3d at p. 1477.) For example, the courts

have fashioned the rule that when a defendant's liability is merely derivative of the liability of another party resolved in a prior proceeding, it is not necessary for the defendant to have been a party to the prior action to assert a claim preclusion defense. (*Brinton v. Pension Services, Inc., supra*, 76 Cal.App.4th at pp. 557-558; *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 578-579.) This nonmutuality rule is premised on the recognition "that it would be unjust to permit one who has had his day in court to reopen identical issues by merely switching adversaries." (*Bernhard, supra*, 19 Cal.2d at p. 813.)

Horton and the District were parties to the First State Action and the First Federal Action where the claims arising from Horton's termination were resolved. Horton's injury arose from the

District's decision to terminate him. The Commission's review was derived from the District's termination decision. The potential liability of the individual defendants turned on their participation in this termination process. Because *Horton* is bound by the prior resolutions of his challenge to his termination, he cannot again challenge the same termination in another lawsuit even though he has named different defendants. (See *Takahashi v. Board of Education, supra*, 202 Cal.App.3d at p. 1477.)

To support his argument against application of the res judicata bar, Horton contends that, through no fault of his own, he was prevented from fully litigating in the First State Action an issue relating to the Commission's jurisdiction. Assuming arguendo this is accurate, Horton's

jurisdictional argument fails on the merits as a matter of law. Thus, this provides no basis to allow Horton to proceed with the Second State Action.

Simply stated, Horton claims that the Commission did not have the authority to proceed with the hearing resulting in his termination because of a prior Commission ruling that had denied the District's motion for a continuance and dismissed the District's termination charges for failure to commence a hearing in timely fashion. Thereafter, the District refilled the charges, and the Commission subsequently ruled on them. Horton contends the Commission's first ruling dismissing the charges had res judicata effect so that the Commission had no authority to hear the new charges.

Horton's contention is unavailing because the Commission's dismissal of the charges for lack of a timely hearing does not equate with a judgment on the merits of the termination charges. Because there was no adjudication on the merits, Horton's claim that the Commission had no authority to proceed with the hearing fails. (See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, §322, p. 874; *Koch v. Rodlin Enterprises* (1990) 223 Cal.App.3d 1591, 1596; *Nichols v. Canoga Industries* (1978) 83 Cal.App.3d 956, 966-967; cf. *People v. Silkes* (1960) 177 Cal.App.2d 691, 697 [res judicata does not bar refilling of criminal charges after dismissal for failure to commence trial within 60 days].)

Contrary to Horton's contention, Government Code section 11524, subdivision(c), does not create a res judicata bar or deprive the Commission of

jurisdiction. This code section provides that if a party does not seek judicial review of an administrative law judge's denial of a continuance within 10 days of the denial, the party shall "be barred from judicial review thereof as a matter of jurisdiction." (Gov. Code, § 11524, subd. (c).) Although the section precludes judicial review from the denial of a continuance absent a timely request, it does not preclude the refilling of charges and a subsequent hearing, as occurred here.

Horton had his day in court to challenge his termination. The trial court properly sustained the defendants' demurrers without leave to amend and

dismissed the action.[3]

DISPOSITION. The judgment is affirmed. Appellant to pay respondents' costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P.J.

O'ROURKE, J.

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[3] After completion of briefing for this appeal, Horton filed a request for judicial notice of a recent United States Supreme Court decision which addresses whether a particular civil rights statute applies to retaliation claims. (CBOCS West, Inc. v. Humphries (May 27, 2008) 553 U.S. [127 S.Ct. 1951].) There is nothing in the decision that concerns the applicability of the res judicata bar, and thus it is not relevant to resolution of Horton's case.

Filed August 07, 2008

Court of Appeal, Fourth Appellate District,

Division One, State of California

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Professional Competence, et al., -

Defendants and Respondents

D051155

(Super. Ct. No. GIC821066)

ORDER DENYING PETITION FOR REHEARING

THE COURT:

The petition for rehearing is denied.

BENKE, Acting P.J.

Copies to: All parties

COURT OF APPEAL – STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

San Diego County Superior Court – Main

P.O. Box 120128

San Diego, CA 92112

RE: WILLIE HORTON, JR.,

Plaintiff and Appellant,

v.

COMMISSION ON PROFESSIONAL

COMPETENCE et. al.,

Defendants and Respondents.

D051155

San Diego County No. GIC821066

*** REMITTITUR ***

I, Stephen M. Kelly, Clerk of the Court of Appeal of the State of California, for the fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on July 29, 208, and that this opinion or decision has now become final.

__ Appellant ____ Respondent to recover costs.

__ Each party to bear own costs.

__ Costs are not awarded in this proceeding.

X Other (See Below)

Appellant to pay respondents' costs on appeal.

Witness my hand and the seal of the Court affixed this October 27, 2008.

STEPHEN M. KELLY, Clerk

By: _____

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8 272(d).)

Mr. Alan Bersin

Superintendent of Schools

Formal Complaint

Alleging Conspiracy & Retaliation against

Principal Willie J. Horton, Jr.

September 24, 1999

September 24, 1990

Mr. Alan Bersin

Superintendent

San Diego City Schools

4100 Normal Street

San Diego, CA 92103

Dear Mr. Bersin:

COMPLAINT BASED ON CONSPIRACY AND RETALIATION

Say that I was completely flabbergasted to learn that Dr. Kathy Coffaro had filed a complaint against me is an understatement. Dr. Coffaro had not once discussed any of her concerns with me,

and indeed, had expressed approval of my principalship both to me and to you in various letters written to you on my behalf. I am not only confounded by her actions, but thoroughly resent the manner in which she handled the situation.

Mr. Bersin you will find that Dr. Coffaro is only the messenger in this conspiracy plot against me.

Mr. Bersin I will outline in chronological order events supported by documentation that led to the present complaint on file in Mr. Terry Smith's office.

I Letter from Dr. Kathy Coffaro requesting to join the Y.O.U. staff as a teacher. (Exhibit A)

II Reprimand from Willie Horton to Kathy Coffaro for using profanity and making inflammatory statements to peers. (Exhibit B)

III Letter to Mr. Bersin explaining Y.O.U. Character Education Program. (Exhibit C)

IV Document written to Dr. Fukuda from Willie Horton, expressing fear of retaliation. (Exhibit D)

V Memo written to Ms. Jolie Pickett concerning lack of follow through on her administrative assignments. (Exhibit E)

I met with Dr. Fukuda to discuss the memo I wrote to Ms. Pickett. Dr. Fukuda was very protective of Jolie Pickett and she became very defensive. I

mentioned that it was common knowledge that they were personal friends and Ms. Pickett has made no bones about being her friend to Y.O.U. staff members. Once again I felt fear of retaliation because Dr. Fukuda became very angry.

VI Memo from Horton to Pickett summarizing meeting of Thursday, June 17, 1999 concerning her lack of follow through on her assignments. Ms. Pickett agreed to complete certain tasks by June 30, 1999. (Exhibit F)

The Personnel meeting was held on June 8, 1999, concerning Diane Curiel. At that meeting I disagreed with Dr. Fukuda that Ms. Curiel should not be fired. Dr. Fukuda looked at me and said "Willie I know where you are coming from now."

Mr. Jose Gonzalez intervened and said, "Willie can have his opinion and if he does not think Ms. Curiel should be fired, no hearing officer is going to uphold the firing."

This was the first time that I had any disagreement with Dr. Fukuda. Since that time I have experienced nothing but retaliation and disparate treatment from Dr. Fukuda. (Exhibit F-1)

VII Memo to Mr. Terry Smith apology for sending you a blind copy of a memo written to Ms. Jolie Pickett. (Exhibit G)

VIII Memo written to Willie Horton from Mrs. Gail Boyle Union representative summarizing our meeting with Dr. Marco Garcia. Mrs. Boyle stressed

that I could not transfer Dr. Garcia because he was never evaluated over a 2 ½ year period while working as a counselor at Y.O.U. I investigated the situation and found that Ms. Jolie Pickett did not follow through with Dr. Garcia's evaluation. (Exhibit H)

IX Letter written to Mrs. Gail Boyle concerning the transfer of Dr. Marco Garcia. Dr. Garcia left Y.O.U. on February 24, 1999. That is when Dr. Garcia started conspiring with Y.O.U. Staff members to file a complaint against me. (Exhibit I)

X Memo to Ms. Jolie Pickett concerning his disapproval of her actions for not

following through on the evaluation. (Exhibit J)

Ms. Pickett finished her assignment at ALBA Alternative School this summer. She only worked two days at Y.O.U. before Dr. Fukuda transferred her to Keiller Middle School as vice-principal. This transfer has never been approved by the Board of Education. This has affected the instructional program at Y.O.U. Once again this is a case of disparate treatment and retaliation by Instructional Team Leader Dr. Fukuda. I have not been able to find another situation like this in the district.

XI Memo written to Mr. Horton concerning being paid for curriculum writing from Dr. Coffaro. (Exhibit K)

XII Memo from Ms. Susan Davis concerning manuscript, "What Works: CORE Values at Youth Opportunities Unlimited." (Exhibit L)

XIII Memo written to Dr. Fukuda concerning the filling of Y.O.U. Vice-Principalship. (Exhibit M)

IXV Memo to W. Horton from Dr. Fukuda concerning time line from filling the Y.O.U. Vice-Principalship opening. In Dr. Fukuda's memorandum she does not mention the school where the principal, or vice-principalships are. (Exhibit N)

Mr. Bersin you should be made aware that Union representative Mrs. Gail Boyle worked for Dr.

Fukuda as a resources teacher at Wilson Middle School. Ms. Jolie Pickett served on the same staff at the same time in the capacity of counselor. Dr. Fukuda was the principal at Wilson Middle School.

At a personnel meeting held on Wednesday, September 22, 1999, Dr. Fukuda has changed her position on the firing of Ms. Diane Curiel.

Dr. Marco Garcia has been working behind the scenes with Dr. Coffaro and other staff members encouraging them to file a complaint against me. Dr. Garcia called my secretary to tell her of the current investigation. He also stated to Mrs. Garcia that "If Mr. Horton would have allowed me to come back to Y.O.U., he would not be going through this investigation." Dr. Garcia also made

the same statement to Mrs. Kathy Balakian-Gomez.

Mr. Bersin according to district procedure 7111 C.3.b. which states:

Prior to filing a complaint employee (or applicant for employment) shall make a good-faith effort to discuss the subject of complaint with division head in charge of the division where the alleged conduct is occurring. The 60-day time limit shall be extended by the actual amount of time used by the complaint in pursuing his/her discussion with the appropriate division head. (Complaint shall maintain and accurate record of dates and times of such discussions.)

Dr. Coffaro took her complaint to Mrs. Arleen Reich, Council Representative for the union. Mrs. Reich did not follow proper procedures by not meeting with or discussing the complaint with Y.O.U. Associate Advisor Representative of the Union, Ms. Lori La Pointe. The complaint was kept secret from her. No meetings were set up in an attempt to resolve the problem.

This experience has of course, been very trying to me, and I am quite certain that another more experienced instructional team leader who is familiar with the long-standing problems at Youth Opportunities Unlimited Alternative Secondary School would be able to recognized and give full credit for the many accomplishments over the last 4 years.

Mr. Bersin I am sure you will seek resolution for this problem. Thank you for your prompt assistance.

Sincerely,

Willie J. Horton, Jr.

cc: JoAnne Sawyer Knoll

Terry Smith

Enclosures: Exhibits A-M

BOARD OF EDUCATION

SAN DIEGO UNIFIED SCHOOL DISTRICT

SAN DIEGO, CALIFORNIA

In the matter of the Dismissal of,

WILLIE J. HORTON, JR.

Respondent.

REQUEST FOR HEARING AND ANSWER

I, WILLIE J. HORTON, JR., respond as follows to the Charges in this matter which were served upon me.

1. I request a hearing to contest the dismissal charges.

The undersigned hereby demands a hearing as required by law to contest the dismissal charges.

2. I deny the dismissal charges, except for those admitted below:

   Education Code section 44934 only requires me to demand a hearing. Nevertheless, without waiving any rights, I deny the dismissal charges. The burden of proof is on you.

3. The following affirmative defenses are raised to the dismissal.

   Education Code section 44934 only requires me to demand a hearing. I intend to raise all appropriate defenses, affirmative or otherwise, based on review of the charges and evidence as

developed while preparing for hearing, including, but not limited to, your violation of Education Code section 44936. I may also raise all defenses in Government Code section 11506 and/or other defenses available to me. The burden of proof is on you

Dated: 2/28/00

WILLIE J. HORTON

Signature of Respondent

SAN DIEGO CITY SCHOOLS

EUGENE BRUCKER EDUCATION CENTER

4100 Normal Street, San Diego, CA 92103-2682

(619) 725-8080 / Fax: (619) 543-1357

HUMAN RESOURCE SERVICES DIVISION

May 31, 2000

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Willie J. Horton, Jr.

15661 El Camino Entrada

Poway, CA 92064-2157

Dear Mr. Horton:

The purpose of this letter is to advise you that you will continue on administrative leave with pay irrespective of the May 25, 2000 ruling of Stephen E. Hjelt, Administrative Law Judge. You are

reminded that you are not to be on any San Diego Unified School District campus or any District facility.

If you have any questions, please feel free to contact my office at 619-725-8006.

Sincerely,

Deberie L. Gomez

Deputy Administrative Officer

C: T. Smith

J. Sawyerknoll

J. Brown

Personnel Records

OFFICE OF THE CLERK

COURT OF APPEAL

FOURTH APPELLATE DISTRICT

STEPHEN M. KELLY, CLERK/ADMINISTRATOR

January 24, 2003

WILLIE J. HORTON, JR.,

Plaintiff and Appellant,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT et al.,

Defendants and Respondents

Case No. D039749

San Diego County Superior Court Case No. 768883

Dear Parties:

Upon review of the exhibits lodged by appellant Willie J. Horton on October 11, 2002, and January 23, 2003, the court has found that it does not have sufficient information to determine whether these exhibits are properly part of the appellate record. A document may not be considered part of the appellate record unless it was part of the superior court record. (*See Pulver v. Avco Financial Services* (1986) 182 Cal.app.3d 622, 632.) Thus, the court is returning these lodged exhibits, with directions to Horton to lodge only those exhibits that were part of the superior court record and to provide some form of supporting documentation of this fact (e.g., an exhibit list, a declaration, or agreement between the parties).

The court further reminds the parties that regardless of which exhibits are properly part of the appellate record, well-settled rules provide that oral argument is not a proper forum to discuss new arguments that have not been raised in the appellate briefs, and it is generally not proper to refer to exhibits during oral arguments that were not properly referenced in the appellate briefs.

Sincerely,

STEPHEN M. KELLY, CLERK

BY: _____

Deputy Clerk

Enclosures to Appellant

State of California

Department of General Services

Gray Davis, Governor

OFFICE OF ADMINISTRATIVE HEARINGS

Interagency Support Division

1350 Front Street, Room 6022

San Diego, CA 92101

(619) 525-4475 / Fax: (619) 525-4419

November 15, 2000

Willie Horton

1898 Ballina Street

San Diego, CA 92114

Jo Anne Sawyerknoll

General Counsel

San Diego Unified School District

4100 Normal Street

San Diego, CA 92103

Re: In the Matter of the Dismissal of Willie Horton,

OAH No. L2000030303

Dear Mr. Horton and Ms. Sawyerknoll:

The motion of respondent Willie Horton for dismissal of the accusation for failure to comply with Education Code section 44938(a) is hereby denied without prejudice to respondent renewing the motion at the time of the hearing.

Very truly yours,

ALAN S. METH

Administrative Law Judge

EXPLANATION OF SECOND AMENDMENT

TO AGREEMENT

BETWEEN

SAN DIEGO UNIFIED SCHOOL DISTRICT

AND

BURKE, WILLIAMS & SORENSEN, LLP

June 25, 2002

PARTIES TO THE AGREEMENT:

San Diego Unified School District and Burke, Williams & Sorensen, LLP

AGREEMENT SUMMARY:

Second Amendment to agreement between San Diego Unified School District and Burke, Williams & Sorensen, LLP. Authorized

expenditure limit is raised $80,000.00 for a total contract value of $230,000.00.

TERM:

September 1, 2000, through the end of litigation unless sooner terminated.

AMOUNT OF FUNDING:

$80,000.00; the total contract amount is $230,000.00

BRIEF DESCRIPTION:

Associate Counsel shall continue to provide legal counsel, advice and representation on any personnel matter involving Willie J. Horton.

SOURCE OF FUNDING:

District Budget Code No. 779-AA-5823-7001

BACKGROUND INFORMATION:

Associate Counsel has assisted in the representation of the District to provide legal counsel, advice and representation on any personnel matter involving Willie J. Horton, pursuant to an agreement dated September 26, 2000; and amended on March 27, 2001.

Prepared by: JoAnne SawyerKnoll, General Counsel

COURT OF APPEAL – STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Filed November 13, 2002 – Court of Appeal Fourth District

WILLIE HORTON,

Plaintiff and Appellant,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT

Defendant and Respondent

ALAN BERSIN,

Real Party in Interest

D039749

San Diego County No. GIC768883

THE COURT:

Respondent's objection to the appellant's exhibits is treated as a motion to strike the exhibits and is DENIED.

HALLER

Acting Presiding Judge

cc: All Parties

Case Number: GIC 768883

Case Name: WILLIE HORTON vs. SAN DIEGO UNIFIED SCHOOL DISTRICT

I, STEPHEN .V. LOVE, Clerk of the Superior Court of the State of California for the County of San Diego, which is a court of record having a seal, certify that by law I have custody of the seal and all the records, books and documents of or pertaining to said court.

I further certify that the document or documents described below and annexed hereto contains a full, true and correct copy of the original document or documents of or pertaining to the Superior Court which is/are on file in my office.

NOTICE OF LODGEMENT IN SUPPORT OF PETITIONER'S OPPOSITION TO RESPONDENTS PRELIMINARY, OPPOSITION TO PETITIONERS PETITION FOR WRIT OF MANDATE, FILED JULY 17, 2001; LODGMENT OF EXHIBITS IN OPPOSITION TO RESPONDDENTS OPPOSITION OF MOTION TO STAY ACTION-ANOTHER ACTION PENDING [SIC]; AND OPPOSITION TO ROBERTA R SISTOS DECLARATION; LODGEMENT OF EXHIBITS IN

(CONTINUED ON ATTACHED SHEET)

WITNESS my hand and the seal of the court this 27th day of January, 2003.

STEPHEN V. LOVE

Clerk of the Superior Court of the State of California for the County of San Diego

I, RICHARD E. L. STRUSS, Judge of the Superior Court of the State of California for the County of San Diego, certify that STEPHEN V. LOVE whose signature is affixed to the above certificate, is the Clerk of the Superior Court of the State of California for said County. As such clerk, he is the proper certifying officer of the court, and by law has custody of the seal and all the records, books and documents of or pertaining to the court, and his certificate is in due form as used in this state.

IN WITNESS WHEREOF I have hereunto set my hand this 27th day of January, 2003.

RICHARD E.L. STRAUSS

Judge of the Superior Court of the State of California for the County of San Diego

I, STEPHEN V. LOVE, Clerk of the Superior Court of the State of California for the County of San Diego which is a court of record having a seal, certify that the Honorable RICHARD E. L. STRAUSS, whose name is subscribed to the above certificate of qualification, was at the date thereof a Judge of the Superior Court of the State of California, for the County of San Diego, duly appointed or elected and qualified and acting; that

said judge is authorized to make such certificates, that full faith and credit are due the official acts as such judge. I further certify that the signature subscribed on the certificate is genuine and that the certificate is executed according to the laws of the State of California.

WITNESS my hand and the seal of the court this 27th day of January, 2003.

STEPHEN V. LOVE

Clerk of the Superior Court of the State of California for the County of San Diego

Chambers of

Hon. James F. Stiven

United States District Court

940 Front Street, Room 1131

San Diego, CA 92101-8927

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FAX TRANSMISSION COVER SHEET

Date: August 28, 2002

To: Clifton Blevins

Fax: 702-9128

Re: *Horton v. Lopez*

Sender: Brandon T. Willenberg, Law Clerk to the Hon. James F. Stiven

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YOU SHOULD RECEIVE 13 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (619) 557-7688.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WILLIE J. HORTON,

Plaintiff,

vs.

EDWARD LOPEZ, et al.,

Defendants.

Case No. 00CV2450-H (JFS)

San Diego, California

Monday, July 22, 2002

10:00 a.m.

TRANSCRIPT OF SETTLEMENT CONFERENCE

BEFORE THE HONORABLE JAMES F. STIVEN

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

WILLIE J. HORTON, IN PRO PER

CLIFTON BLEVINS, ESQ.

For the Defendants:

ROBERTA R. SISTOS, ESQ.

NORBERTO J. CISCNEROS, ESQ.

Burke, Williams & Sorensen

402 West Broadway

Suite 810

San Diego, California 92101

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Transcript Ordered by:

HON. JAMES F. STIVEN

Transcriber:

Susan Salyer

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7046 Enders Avenue

San Diego, California 92122

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Proceedings recorded by electronic sound recording; transcript produced by transcription services.

SAN DIEGO, CALIFORNIA

MONDAY, JULY 22, 2002 - 10:00 A.M.

--o0o--

(Call to order of the Court.)

THE CLERK: Case number 00CV2450, Horton versus Lopez.

MR. BLEVINS: Good afternoon, your Honor.

THE COURT: It's gotten to be afternoon, Mr. Blevins.

MR. BLEVINS: Clifton Blevins appearing with Plaintiff, Willie Horton, Jr. who is also present.

MS. SISTOS: I'm Roberta Sistos on behalf of San Diego Unified School District.

MR. CISNEROS:

THE COURT: All right. Thank you, Counsel.

Let me reflect for the record that we have just concluded a lengthy settlement conference that started at 10:00 this morning with a short lunch break. It's now 3:00 in the afternoon, and the parties have reached an agreement that will allow for resolution and dismissal of this present action.

What I would intend to do is to recite the essential terms of the settlement agreement, which will be binding on all parties, here on the record today, ask counsel first to indicate that I have correctly stated the terms of the agreement. And if I have left anything out or you think anything needs to be clarified, Counsel, please so state on the record. And then I'll ask party

representatives who are here to confirm their understanding of the agreement and their acceptance of it.

It is also understood that while what we're putting on the record here today will constitute an agreement between the parties, it's binding to resolve this case. There will, nonetheless, be the necessity of drafting a written settlement agreement which will recite in detail the understandings of the parties, which will have to be executed and filed along with the request for dismissal of the action.

The essential terms of the settlement are as follows.

That the parties mutually agree that the pending action and the pending counter claim will be dismissed with prejudice, that all parties

will execute mutual general releases releasing each other from any and all claims against them, including the waiver of Civil Code section 1542.

It is understood that the settlement is without any admission of liability by any party, and that the settlement agreement and release documents will so recite that there is no admission of liability by any party.

It is further agreed that the parties will, in accepting the mutual dismissals of the claims and counter claims in this action, also waive on both sides any rights to recover or assert any attorney's fees or costs.

Further, it is agreed that as a consideration for the agreement to dismiss this pending federal court action that the Defendant District will afford to Mr. Horton, the Plaintiff, an

opportunity to submit his voluntary resignation from his position with the District.

It is understood that, at present, Mr. Horton's status shows as having been terminated, but that that termination is on appeal through state court process currently pending an appeal before the State Court of Appeals.

It is agreed that at any time after this agreement is consummated here that Mr. Horton would, at his discretion, be given the opportunity and the option of submitting his voluntary resignation, and that that voluntary resignation would be accepted by the district upon his tendering of that resignation. And that resignation could be tendered presently upon the execution or consummation of the agreement or even as late as a reasonable time after receipt of an adverse decision

by the court of Appeal on the pending appeal that I've just referenced.

If that resignation is submitted and accepted as the district agrees to do, if it is submitted, then Mr. Horton's employment record will reflect that he voluntarily resigned his position with the district.

It is also agreed and understood that the resignation, whenever tendered and accepted, as we have stated here, will be deemed retroactive to March 15, 2001, and further agreed that Mr. Horton will have no right to claim or recover any pay or benefits for any period between March 15, 2001 and the date that the resignation is actually tendered or accepted.

I think that that is the essential terms of the agreement. But Counsel, if I have missed

something or not correctly stated something, please say so.

MR. SISTOS: Your Honor, I believe Mr. Horton was placed on unpaid leave prior to March 15th. And so, the back pay should go back to the period of time when he was placed on unpaid leave.

THE COURT: Yeah. His – It would be understood that he would have no rights to back pay or benefits from the date of the commencement of his unpaid administrative leave.

MR. BLEVINS: Your Honor – statement as to -- I'm not sure if my mind was – might have been somewhere else – relative to what they would be reporting if --

THE COURT: Yes. That's a fair question, Mr. Blevins, because we did have

discussion, and I think it is a material point, as well, that it is the understanding of the parties and part of the agreement that the requirements that are imposed upon the district to report to the California Teacher's Credential Commission, no requirement would be to make a report to that commission unless and until there is an adverse decision by the Court of Appeal on the pending appeal, with the possible exception that should Mr. Horton elect to voluntarily resign before that time, then the obligation to report to the CTC may be effective at the time of his resignation. Is that correct?

MS. SISTOS: That is correct, your Honor.

THE COURT: Okay.

MR. BLEVINS: Yes. Then the other part of it is if a prospective employer – I'm not sure if I heard that part.

THE COURT: I think that's also a correct statement, Mr. Blevins. And we'll add to the recitation of the agreement. And that is that should, in accordance with this agreement, Mr. Horton tender his resignation, as has been agreed and is thus accepted by the District, his record will reflect that he had voluntarily resigned his position. And should any prospective employer contact the District for information with respect to Mr. Horton's status, they will report to any prospective employer only the dates of his employment, positions held, and the fact that he voluntarily resigned on such and such a date.

MS. SISTOS: Your Honor?

THE COURT: Yes?

MS. SISTOS: I would like Mr. Horton also to agree that he will keep this matter confidential, as will the District, unless required to reveal any of the information by a mandate of law.

THE COURT: All right. We hadn't specifically talked about confidentiality before. Obviously, if he resigns I would presume that that fact would not be held confidential, but only the terms of this agreement be held confidential.

MS. SISTOS: The allegations that have been asserted in this action, if they could remain confidential? In other words, the District isn't going to be bad-mouthing Mr. Horton, and we expect the same from Mr. Horton as to the District.

THE COURT: Mr. Blevins, as I say, we hadn't specifically discussed such things before, but could we --

MS. SISTOS: If he'll agree to that, your Honor.

THE COURT: Could we have something in – Is there an agreement that we could have a mutual non-disparagement clause in the agreement, in other words, that would be agreed that the district would say nothing disparaging about Mr. Horton and, likewise, Mr. Horton would not say disparaging things about the district?

MR. BLEVINS: Is that all you want? Is that the last --

MS. SISTOS: Yeah.

I'm sorry, your Honor, if I've been bringing up something new. To me, that's part of

the confidentiality provision, but I just wanted to clarify them. I'm glad that I'm clarifying it if it's not understood, because that's what I understand confidentiality to be. If there's mutual confidentiality --

THE COURT: Well, I mean, typically, not to belabor this, but typically, if there's a confidentiality clause in the settlement agreement, and there frequently are, although that's usually negotiated, but if there's a confidentiality provision, it simply means that the terms of the settlement agreement are deemed confidential.

What you're talking about, in my mind, is something slightly beyond that, and that is a non-disparagement, that neither party will make disparaging remarks to third parties about the

other. And you know, if the parties are in agreement with her, I think that's useful.

MR. BLEVINS: I think the agreements binds them not to do that to future or prospective employers.

THE COURT: They're certainly bound to do that with respect to future employers making any – inquiry. But perhaps it would be – it would serve the parties well on both sides to just have a general agreement that neither party will make disparaging remarks about the other in any context.

MR. BLEVINS: He has – freedom of speech – consideration his right to participate --

MS. SISTOS: I'll withdraw that, your Honor.

THE COURT: All right.

MS. SISTOS: I'm withdrawing it.

THE COURT: All right. I think that's maybe easiest in this case.

MS. SISTOS: And your Honor, within a reasonable – you say if he files a – he will retain the option to file a resignation within a reasonable period of time. Could we make that a set period, like 30 days?

THE COURT: I think that would probably be fine. That's – we talked about in this room a few minutes ago.

Mr. Horton did ask, you know, how soon would he have to act after the Court of Appeal decision is rendered. And I think we went through the fact that if the Court of Appeal renders a decision that's favorable to Mr. Horton, or leaves open his options, then he doesn't have to act with

respect to the resignation. If the Court of Appeal acts adversely to him and affirms the Superior Court's upholding of the administrative decision, then he would be bound to submit his resignation. And I think under those circumstances within 30 days after the Court of Appeals issues its opinion.

MS. SISTOS: And then one --

THE COURT: Is that agreeable, Mr. Blevins?

MR. BLEVINS: That's agreeable.

THE COURT: Okay.

MS. SISTOS: One last item. And that is if you would retain jurisdiction over this case just to resolve any disputes that might arise out of the interpretation of the settlement agreement?

THE COURT: Right. Is that agreeable?

MR. BLEVINS: That's agreeable.

THE COURT: All right.

Mr. Horton, you've heard us recite all of the essential terms of this agreement on the record. Do you understand those terms, sir?

MR. HORTON: Yes, I do.

THE COURT: And do you agree with them?

MR. HORTON: Yes, your Honor.

THE COURT: All right. And who is speaking on behalf of the District?

MS. SAWYER: Joanne Sawyer – general counsel. I understand the terms and I agree to them on behalf of the district.

THE COURT: All right. Thank you, Counsel and Mr. Horton.

And I'll now put to counsel the task of drafting up the appropriate documents, including a settlement agreement with mutual releases, and a request for dismissal with prejudice of the pending action and counter-claim, and would hope that you could accomplish all that within 30 days?

MS. SAWYER: Yes, your Honor. We would accept undertaking the laboring oar of drafting the agreement.

THE COURT: I'm sorry?

MS. SAWYER: We would accepting undertaking the laboring oar of drafting the agreement and sending it over to Mr. Blevins.

THE COURT: All right. Good. All right. Thank you, everyone. I hope I don't have to

see you again. I hope we're on an even keel here about what needs to be done.

MS. SISTOS: Thank you very much.

THE COURT: All right. My pleasure.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter

_____ Date: 8/26/02

Susan -- , Transcriber

FEDERALLY CERTIFIED TRANSCRIPT

AUTHENTICATED BY :

_____

L. L. Francisco, President - Echo Reporting, Inc.